IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

Crl.L.P..No. 584 of 2006()

CC.397/2002 of CHIEF JUDICIAL MAGISTRATE'S KASARAGOD

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PETITIONER/COMPLAINANT:

S.M.SHETTY, 70 YEARS,
S/O.LATE MAHALINGA SHETTY,
MUTTA HOUSE, MUTTAGATE,
P.O.UPPALA, MANGALPADY,
KASARAGOD.

BY ADV. SMT.R.PADMAKUMARI

RESPONDENTS: ACCUSED AND STATE

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1. K.ISMAIL, AGED 62 YEARS,
GENERAL MERCHANT, KUTTAR,
P.O.MUNNAR, THOKKOTU, ULLAL.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN-R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL.L.P. NO. 584 OF 2006

Dated this the 9th day of November, 2006

O R D E R

This petition for leave to appeal is filed against the judgment in C.C.No.397 of 2002 on the file of the Chief Judicial Magistrate's Court, Kasaragod. The above case was taken on file on the basis of a private complaint filed by the appellant alleging that the first respondent herein committed offence punishable under Section 420 I.P.C.

2. It is alleged in the complaint that the first respondent borrowed from the petitioner - complainant a sum of Rs.1,50,000/- on 20.12.2000 and issued Ext.P1 cheque towards discharge of the said liability which when presented to the bank on 30.12.2000 for encashment was dishonoured with the endorsement " account closed". When the first respondent did not repay the amount inspite of repeated requests, the petitioner filed the complaint after completing the statutory formalities. To prove the case of the complainant, he himself was examined as PW.1 and the Manager of Karnataka Bank was examined as PW.2 and Exts.P1 to P6 were produced. Though no oral or documentary evidence was produced on the side of the defence, the first respondent when question under Section 313 Cr.P.C. stated that he had not issued Ext.P1 cheque and had

no account with the bank of PW.2. The first respondent also stated that he had no transaction with the complainant and does not know him personally. The first respondent also raised a contention with regard to the territorial jurisdiction of the court to consider the issue.

3. After trial, the court below found that the petitioner miserably failed to prove the offence alleged against the first respondent under Section 420 I.P.C. The trial court also found that the petitioner failed to prove that there was transaction between him and the first respondent and that Ext.P1 cheque was issued by the first respondent in discharge of any liability. The question regarding the territorial jurisdiction was not answered by the court below. From the evidence adduced, the court below categorically found that the appellant failed to prove the case against the first respondent. That apart, the trial court also relied on various judgments of the Apex Court to come to the above finding. In the above circumstances, this Court is of the view that the impugned judgment requires no interference.

The Crl.L.P. is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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